

THE TRUST SERVICES PROHIBITION IN THE UK'S RUSSIA SANCTIONS REGIME



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On 16 December 2022 the UK introduced into its Russia sanctions regime a prohibition on trust services; the prohibition also has effect in the Overseas Territories and Crown Dependencies¹. The prohibition comprises two rules, as follows:

- “A person must not provide trust services to or for the benefit of a designated person” – a “designated person” means a person sanctioned by the UK under its Russia sanctions regime.
- “A person (“P”) must not provide trust services to or for the benefit of a person connected with Russia (“C”) unless pursuant to an ongoing arrangement pursuant to which P provided those trust services to or for the benefit of C immediately before 16th December 2022” – as regards individuals, a “person connected with Russia” means a person “ordinarily

resident” or “located” in Russia (thus, importantly, Russian nationality is irrelevant)².

Practically, whether the prohibition applies can be determined by working through these questions:

(1) Is the service provider bound by the trust services prohibition?



In UK law, the prohibition binds: any person in relation to conduct within the UK; and UK nationals and UK incorporated entities worldwide. This is modified in the law of each of the Overseas Territories and Crown Dependencies.

For example: if trust services are provided by a UK national in Luxembourg, they are bound by the prohibition, by virtue of their nationality; conversely, a Luxembourg national in Luxembourg who is a trustee of a trust whose beneficiaries are UK nationals would not be bound, unless any of the conduct involved in the provision of those trust services took place in the UK.

¹ The UK's Russia sanctions regime is set out in the Russia (Sanctions) (EU Exit) Regulations 2019. All references to regulations (“regs.”) below are to regulations therein. The trust services prohibition is set out at reg. 18C; various exceptions to the prohibition are set out at reg. 60ZZB.

² It further means: “a person, other than an individual, which is incorporated or constituted under the law of Russia, or which is domiciled in Russia”.

(2) Is the service a trust service?



“Trust services” are defined as follows:

- The creation of a trust or similar arrangement.
- The provision of a registered office, business address, correspondence address or administrative address for a trust or similar arrangement.
- The operation or management of a trust or similar arrangement.
- Acting or arranging for another person to act as trustee of a trust or similar arrangement, where “trustee”, in relation to an arrangement similar to a trust, means a person who holds an equivalent or similar position to a trustee of a trust.

Practically, a key question will often be whether, by the provision of the service, the person operates or manages a trust or similar arrangement. A central distinction is between: (1) the trustees and others who administrate the trust or similar arrangement; and (2) persons who provide advisory services only.

For example, if a lawyer or an accountant provided advice to the trustees, they would not thereby operate or manage the trust, so would not provide trust services under that part of the definition.

However, advisory services could fall within other parts of the definition. For example, a lawyer drafting a deed of appointment for a trustee provides trust services, since that goes to arranging for another person to act as trustee.

Whether an arrangement is a “similar arrangement” to a trust needs to be considered on the facts.

(3) If the service is a trust service, would it provided to, or for the benefit of a designated person or a person connected with Russia?

The provision of a trust service “to” such a person is not further defined. But a trust service is provided “for the benefit” of such a person if they are:

- a beneficiary of a trust or similar arrangement;
- referred to as a potential beneficiary in a document from the settlor relating to a trust or similar arrangement (such as a letter of wishes); or

having regard to all the circumstances, the person might reasonably be expected to obtain, or to be able to obtain, a significant financial benefit from the trust or similar arrangement.

In relation to the last requirement, as regards designated persons, a key circumstance is likely to be whether the trustees can be assumed to comply with UK law (or the law of the relevant Overseas Territory or Crown Dependency). If yes, while each case will need to be considered on its own facts, the start point is likely to be that the requirement is not met: since, were the trustees though their actions to confer a significant financial benefit on the designated person, they would breach other prohibitions in the Russia sanctions regime.

(4) If the trust services prohibition is engaged, is there an applicable exception or licence available to allow the service to be provided in a way that would not breach the prohibition?



A key exception as regards persons connected with Russia (but not designated persons) is if the service is provided pursuant to an “ongoing arrangement”, as defined above.

There are various further exceptions.³ For example, if the person connected with Russia is under 18 years old, trust services may be provided to them, or for their benefit, so long as those services are not provided “primarily” to, or for the benefit of, a designated person.

Alternatively, a licence from the relevant regulatory authority may be available.⁴

Reporting requirements



Note that the definition of “trust services” in the trust services prohibition introduced on 16 December 2022 re-cast the reporting requirements in relation to trust services under the Russia sanctions regime; however, only “relevant firms” are subject to those reporting requirements.⁵

Other prohibitions



Practitioners considering whether the trust services prohibition applies may also need to consider the (separate) prohibitions on professional services to persons connected with Russia, in particular those on accounting, auditing, and business and management consulting relations services.⁶

Finally, be aware that there is a separate EU sanctions law trust services prohibition, which inter alia binds any person who is an EU national worldwide.⁷ Unlike the UK prohibition, Russian nationality is relevant to the EU prohibition.

³ See reg. 60ZZB.

⁴ See reg. 64.

⁵ See reg. 71, and Part 8. “Relevant firm” is defined at reg. 70.

⁶ See reg. 54C.

⁷ See Art. 5m of Council Regulation (EU) No 833/2014.